

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WILMINGTON DIVISION

IN RE:

CAREMERICA, INC.

DEBTOR

JAMES B. ANGELL, CHAPTER 7 TRUSTEE,
Plaintiff

v.

CHRISTOPHER HAVERI,

Defendant

CASE NO:

06-02913-8-JRL

CHAPTER 7

Adversary Proceeding No.

**COMPLAINT TO AVOID AND RECOVER PREFERENTIAL AND/OR FRAUDULENT
TRANSFERS**

NOW COMES James B. Angell, Chapter 7 Trustee in the above referenced case, by and through undersigned counsel, pursuant to 11 U.S.C. §§ 547(b), 548, 550(a) and 551 and Rule 7001(1) of the Federal Rules of Bankruptcy Procedure, and files this Complaint against the Defendant to avoid certain preferential and/or fraudulent transfers, and to recover for the benefit of the estate such transfers, and in support thereof states as follows:

1. Caremerica, Inc., Caremerica Adult Care, Inc. 06-02906-8-JRL, The Meadows of Hermitage, Inc. 06-02917-8-JRL, The Meadows of Fayetteville Inc. 06-02916-8-JRL, and The Meadows of Wilmington, Inc. 06-02910-8-JRL (the "Debtors") each filed a voluntary petition for relief on September 15, 2006 under Chapter 11 of title 11, United States Code in the Eastern District of North Carolina. Each of these cases was subsequently converted to case under Chapter 7. These cases were substantively consolidated pursuant to that Order Allowing Substantive Consolidation and the Appointment of a Single Trustee filed on February 4, 2008, as amended by that Order Allowing Trustee's Motion for Amendment and Clarification of Order filed on May 16, 2008, to be administered under the caption of the Caremerica, Inc. case.

2. The Plaintiff James B. Angell is the duly appointed, qualified and acting Chapter 7 Trustee ("Trustee" or "Plaintiff") in the consolidated case.

3. The Court has jurisdiction of this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334.

4. Venue is appropriate in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. This proceeding is a core proceeding under 28 U.S.C. § 157(b)(2).

GENERAL ALLEGATIONS

6. Caremerica, Inc., Caremerica Adult Care, Inc., The Meadows of Hermitage, Inc., The Meadows of Fayetteville Inc., and The Meadows of Wilmington, Inc. were subject to the dominion and control

of Ronald E. Burrell and Michael R. Elliott, who used such control to commit fraud or wrong, in violation of their legal duties to the Debtors, resulting in substantial losses to creditors of the Debtors.

7. Piercing the corporate veil of the Debtors, as to one another, is appropriate to protect the rights of creditors of the various Debtors and the Debtors should be considered to be a single enterprise (the "Consolidated Debtor").

8. During the ninety (90) day period prior to the Petition Date ("Preference Period"), one or more of the Debtors or, in the alternative, the Consolidated Debtor (jointly the Debtors and the Consolidated Debtor will hereinafter be referred to as the "Transferor") made certain transfers to the Defendant in the amount of at least \$ 7,438.39 ("Preferential Transfers").

9. During the two year period prior to the Petition Date ("Fraudulent Transfer Period"), one or more of the Debtors, or, in the alternative, the Consolidated Debtor, (the "Transferor") made certain transfers to the Defendant in the amount of at least \$ 8,369.61 ("Fraudulent Transfers").

COUNT I

AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFER PURSUANT TO 11 U.S.C. §§ 547, 550 AND 551

10. The Plaintiff incorporates the allegations set forth in paragraphs 1 through 9 above in their entirety.
11. The Preferential Transfers constituted a transfer of an interest of the Transferor in property.
12. The Preferential Transfers were made to or for the benefit of the Defendant as a creditor of the Transferor.
13. The Preferential Transfers were made for, or on account of, an antecedent debt owed by the Transferor to the Defendant before the transfers were made.
14. The Preferential Transfers were made while the Transferor was insolvent.
15. The Preferential Transfers were made within ninety (90) days of the Petition Date.
16. The Preferential Transfers enabled the Defendant to receive more from the Transferor than it would have received in a Chapter 7 case had the Preferential Transfers not been made and the Transferor received payment on its claim to the extent provided by Title 11 of the United States Code (the "Bankruptcy Code").
17. Pursuant to Bankruptcy Code § 547(b), the Preferential Transfers are avoidable.
18. The Defendant was the initial transferee, or an immediate or mediate transferee of the Preferential Transfers.
19. The Defendant is accordingly liable to the Trustee on behalf of the bankruptcy estate for the recovery of the Preferential Transfers, or the value of the property transferred, pursuant to 11 U.S.C. § 550 and 551.

COUNT II

AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFER PURSUANT TO 11 U.S.C. §§ 548, 550 AND 551

20. The Plaintiff incorporates the allegations set forth in paragraphs 1 through 19 above in their entirety.

21. The Fraudulent Transfers constituted a transfer of an interest of the Transferor in property.

22. The Fraudulent Transfers were made within two years of the filing of the petition.

23. The Transferor voluntarily made the Fraudulent Transfers.

24. The Fraudulent Transfers were made with the actual intent to hinder, delay, or defraud an entity to which the Transferor was or became, on or after the date that such transfer was made, indebted.

25. To the extent the Defendant may not have been a creditor of the Transferor for the Fraudulent Transfers, the Transferor received less than reasonably equivalent value in exchange from the Defendant for the Fraudulent Transfers.

26. The Transferor was insolvent on the date of the Fraudulent Transfers or became insolvent as a result of the Fraudulent Transfers.

27. The Fraudulent Transfers are avoidable as a fraudulent transfer pursuant to 11 U.S.C. § 548. The Defendant is accordingly liable to the Trustee on behalf of the bankruptcy estate for the recovery of the Fraudulent Transfers, or the value of the property transferred, pursuant to 11 U.S.C. § 550 and 551.

WHEREFORE, the Plaintiff prays the Court to grant the following relief:

1. For a money judgment against the Defendant in the amount of at least \$ 8,369.61 on the account of the avoidance of the Transfers and pursuant to 11 U.S.C. §§ 547, 548, 550 and 551;
2. To tax the costs of this action against the Defendant;
3. To grant such other relief as the Court deems just and proper.

Dated: September 12, 2008.

HOWARD STALLINGS FROM & HUTSON, P.A.

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